

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT DENIED BY
THE CITY OF TACOMA TO JERRY
CASEY dba THE ANCHORAGE, INC.

JERRY CASEY dba THE ANCHORAGE,
INC.,

Appellant,

v.

CITY OF TACOMA,

Respondent

SHB No. 79-19

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the request for review of a substantial development permit denied by the City of Tacoma to Jerry Casey dba The Anchorage, Inc., was brought before the Shorelines Hearings Board, David Akana, Chairman, Chris Smith, James S. Williams and David W Jamison, on July 10, 1979, in Tacoma, Washington. Hearing Examiner William A. Harrison presided.

Appellant was represented by its attorney, Nicholas F. Corning.

Respondent was represented by Thomas L. Dempsey, Assistant City Attorney. Reporter Diane Jenkins recorded the proceedings.

Having heard the testimony, having examined the exhibits, having read the Hearing Memoranda, having heard the arguments of counsel, and being fully advised, the Shorelines Hearings Board makes the following:

FINDINGS OF FACT

I

Appellant, Jerry Casey dba The Anchorage, Inc., seeks to construct a 648 boat dry storage facility. Appellant approached the Port of Tacoma ("Port") concerning a site owned by the Port on the Hylebos Waterway in Tacoma. After reviewing appellant's proposal, the Port granted certain oral assurances to the appellant that the site would be available. On October 9, 1978, in reliance on this assurance, appellant applied to the City of Tacoma ("City") for a shoreline substantial development permit for his proposed development at the site owned by the Port.

II

A hearing on appellant's application was convened before the City Hearing Examiner on December 5, 1978. The Port then advised the City that if a substantial development permit were granted, the Port's commitment to lease the property to appellant would stand. (Exhibit R-1, p. 8). The hearing was continued for further study of the safety aspects of the proposed development.

On January 19, 1979, the Port advised the City by letter (Exhibit A-6) that the site was no longer available to the appellant

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and had been leased by the Port to another party.

Subsequent to a further hearing on February 14, 1979, the City Hearing Examiner entered Findings, Conclusions and Recommendation. He concluded that it was not necessary to resolve the issue of safety because

"... the applicant lacks a legally recognized interest in the subject property and, accordingly, is without standing to request a Shoreline Management Substantial Development Permit."

and recommended denial. The City Counsel subsequently concurred in the Findings and Conclusions and denied appellant's application on April 10, 1979. Appellant requests review of this denial.

III

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these

CONCLUSIONS OF LAW

I

We conclude that the City's denial of a substantial development permit on the grounds that appellant lacked a legally recognized interest in the subject property, and therefore lacked standing, is incorrect.

As a general proposition, the Shoreline Management Act of 1971, chapter 90.58 RCW does not specifically require an interest in the property before a substantial development permit shall be granted. An antecedent condition such as who may receive a permit may not be inconsistent with the SMA if adopted under the rulemaking authority

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1 | which the Act confers for the administration of the permit system.
2 | RCW 90.58.140(3). Neither the rules of the City nor the Department of
3 | Ecology contain any reference to a legally recognized interest in the
4 | subject property as a condition to receipt of a substantial development
5 | permit. No property interest requirement should be assumed. A permit
6 | proceeding cannot adjudicate whether a property interest exists.
7 | The City rules for administration of the permit system,
8 | Section 13.10.220, require consistency with Department of Ecology rules
9 | while WAC 173-14-110 thereof sets forth in its text a minimum application
10 | form containing four discrete categories for a shoreline permit applicant,
11 | namely: 1) owner, 2) purchaser, 3) lessee or 4) other. (Emphasis added).
12 | We take official notice of these rules.

13 | We therefore conclude that an applicant's entitlement to
14 | substantial development permit is not dependent upon an applicant's
15 | property interest in the site but upon the nature of the substantial
16 | development itself. See Goodman v. City of Spokane, SHB No. 214 (1976).

17 | II

18 | We find the case authority from other states advanced by respondent
19 | to be unpersuasive in light of the specific statute and rules before us.

20 | III

21 | Any Finding of Fact which should be deemed a Conclusion of Law
22 | is hereby adopted as such.

23 | From these Conclusions the Board enters this

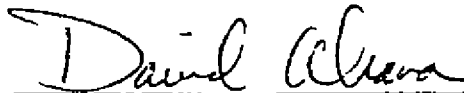
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25 | FINAL FINDINGS OF FACT,
26 | CONCLUSIONS OF LAW
27 | AND ORDER

ORDER

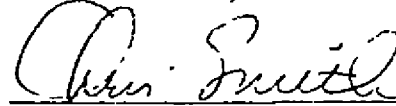
The denial of appellant's application for a shoreline substantial development permit because appellant lacks a legally recognized interest in the subject property is hereby reversed and the matter remanded to the City of Tacoma for further consideration of that application.

DONE at Lacey, Washington this 25th day of July, 1979.

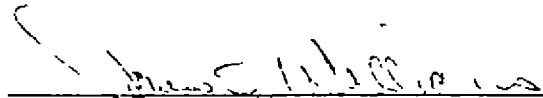
SHORELINES HEARINGS BOARD



DAVID AKANA, Chairman



CHRIS SMITH, Member



JAMES S. WILLIAMS, Member



DAVID W. JAMISON, Member

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